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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 537

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

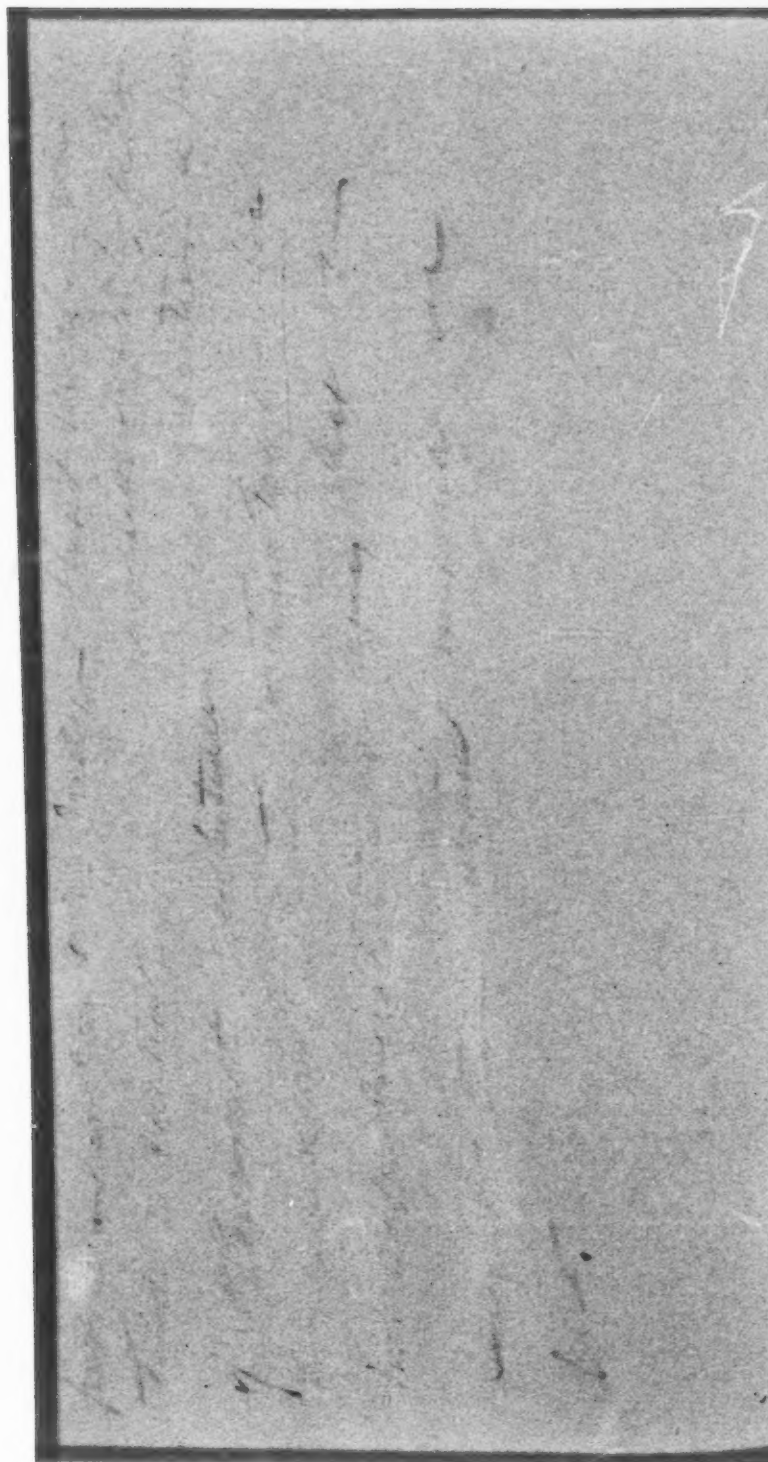
vs.

SAMUEL GETTINGER AND HARRY POMERANTZ, TRAD-
ING UNDER THE FIRM NAME, ETC.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF NEW YORK

FILED JULY 29, 1926

(32104)



SUPREME COURT OF THE UNITED STATES

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No. 537

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR

vs.

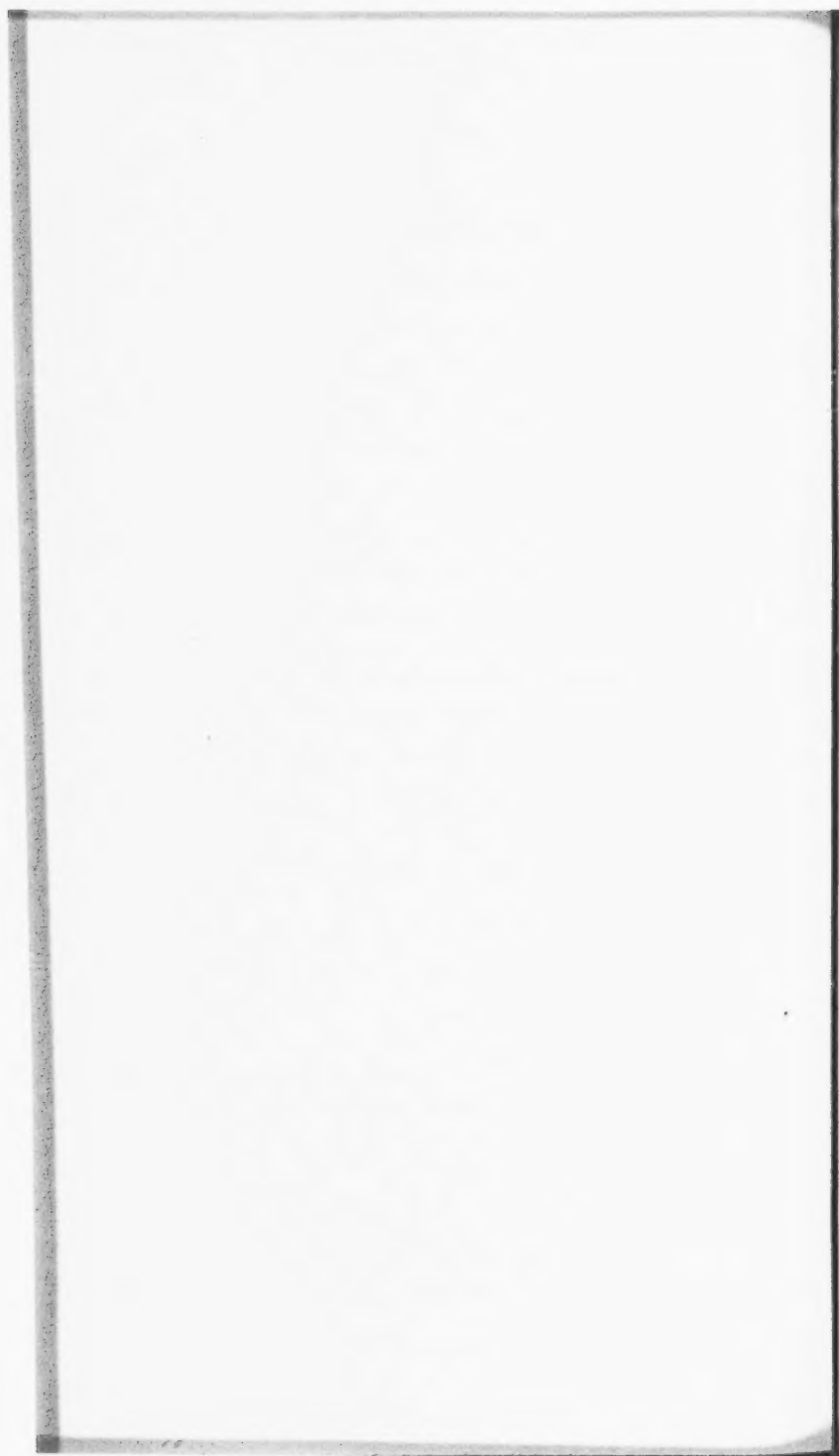
SAMUEL GETTINGER AND HARRY POMERANTZ, TRAD-
ING UNDER THE FIRM NAME, ETC.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF NEW YORK

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550352



1 United States District Court, Northern District of New York

SAMUEL GETTINGER AND HARRY POMERANTZ, TRADING UNDER THE FIRM
name and style of The Paris Cloak and Suit Company, plaintiff

VS.

UNITED STATES OF AMERICA, DEFENDANT

Bill of complaint

Filed May 24, 1924

*To the honorable United States district judges for the northern
district of New York:*

The claimants, plaintiffs and petitioners, Samuel Gettinger and Harry Pomerantz, trading under the firm name and style of The Paris Cloak and Suit Company, by Dugan & Bookstein, and Joseph Greenberg, their attorneys, respectfully show to this honorable court:

First. That they are citizens of the State of New York and of the United States of America, domiciled in said northern district of New York and over the age of twenty-one years.

Second. That at a regular term of the United States District Court for the Northern District of New York, held in the month of February, 1920, at Albany, New York, the grand jury then in session in and for said court duly empaneled for said term, pursuant to the statute in such case made and provided, and pursuant to law and the practice of this court, in form made and found and reported to said court, an indictment charging therein that these claimants

2 had violated section #4 of the statute of the United States of America, being chapter #53 of the 65th Congress of the United States, passed on August 10th, 1917, known as the Lever Act as amended by section #2 of chapter 80 of the 65th Congress, passed on October 22, 1919, in that they, the claimants had made unjust and unreasonable rates or charges in selling women's apparel in violation of the provisions of said section, whereby they, the said claimants were charged with the commission of a crime against the United States of America.

Third. That said claimants were thereupon brought before this honorable court and entered a plea of not guilty to said indictment, but thereafter and at a term of this court held on the 8th day of October, 1920, at Auburn, in said district, said claimants withdrew their pleas of not guilty and then and there entered pleas of nolo contendere and to said plea which was in writing, copies are hereto annexed and marked "Schedule A and B" and made a part of this bill, your claimants expressly reserved every right they might have to the fine to be imposed in the event that the so-called Lever Act, under the provisions of which the indictment was found, was discovered to be unconstitutional.

Fourth. That upon said plea of nolo contendere the court imposed sentence and the sentence of the court was that your claimants be fined the sum of five thousand (\$5,000) dollars; that they be confined in jail until the said fine be paid and that pursuant to the judgment of the court, your claimants paid to the clerk of the United States Court for the Northern District of New York the sum of five thousand (\$5,000) dollars which was by him deposited to the credit of the Treasury of the United States, and the said money of said claimants has been so retained from them.

3 Fifth. The United States Supreme Court, February 28th, 1921, held section #4 of the so-called Lever Act to be unconstitutional and null and void.

Sixth. That thereafter and after the rendering by said Supreme Court of said decision in said other similar and analogous cases, an order was made by this court and entered on the 25th day of April, 1924, by the terms of which order the indictment against your claimants was held in all respects to be null and void; the plea of nolo contendere which was entered on the 8th day of October, 1920, to said indictment was vacated, set aside, and held for naught to the same effect as if said indictment had never been returned. Whereby these claimants became and are placed in status quo as of a time prior to the time of finding of said indictment without charge, arraignment, trial, conviction, or other proceeding whatsoever against these claimants except that they have so far never been repaid or had returned said sum of five thousand (\$5,000) dollars so exacted and required and now in the possession of the defendant.

Seventh. That by reason of the premises the defendant herein in judgment and as a matter of law, under section #24, subdivision #20, of the Judicial Code of the United States is obligated to repay to these claimants the sum of five thousand (\$5,000) dollars with interest from the 8th day of October, 1920, the date when the defendant received the same, that said sum was by reason of the premises had and received by the defendant for the use and benefit of these claimants, and as the fund of these claimants, and is now due and payable by the defendant to these claimants, and that pursuant to the premises a contract was made and entered into between these claimants and the defendant, whereby defendant agreed

4 and is obligated to repay and return to these claimants the said sum of five thousand (\$5,000) dollars and interest aforesaid, upon the cancellation of said judgment and the dismissal of said indictment and action; and these claimants allege upon information and belief that the defendant has failed and neglected upon demand duly made by them upon it therefor to repay said money.

Eighth. And these claimants further allege that this court has jurisdiction of said claim and action for the recovery of said money and has proven and it is its duty to award judgment for the recovery thereof, by virtue of section #24, subdivision #20, of the Judicial Code of the United States; duly enacted by the Congress of the United States and in force and applicable to this claim and

action, and that jurisdiction attaches of this claim and action in this court because of the fact that this claim and action is for the recovery from the said United States of a sum not in excess of ten thousand (\$10,000) dollars and because the claim herein is based upon an implied contract of the Government of said United States to repay said sum, and is for the recovery of said sum, as liquidated damages, and is a claim based upon the Constitution of the said United States and the right of these claimants preserved thereby, and arose from the enforcement of a law of said Congress now determined to be void.

Wherefore these claimants, plaintiffs, and petitioners hereby demand judgment against the said United States, defendant herein, for the sum of five thousand (\$5,000) dollars and
5 interest thereon from October 8th, 1920, besides the costs of this action.

SAMUEL GETTINGER & HARRY POMERANTZ,
Claimants.

By DUGAN AND BOOKSTEIN,
*Their attorneys. Office and Post Office Address, 50
State Street, Albany, New York.*

JOSEPH GREENBERG,
Albany, New York, of Counsel.

6 *Duly sworn to by Harry Pomerantz et al., jurat omitted in
printing.*

7 *Exhibit to bill of complaint*

Schedule A

United States District Court, Northern District of New York

UNITED STATES

VS.

SAMUEL GETTINGER, TRADING UNDER THE FIRM NAME OF PARIS CLOAK
and Suit Store, and Harry Pomerantz

In consideration that the Attorney General and this court shall accept the plea nolo contendere which I hereby tender to the above-entitled indictment, I do hereby waive any and all claims which I now have or hereafter may have to any and all fines which the court may see fit to impose upon me upon such plea, except in the event that the so-called Lever Act under which said indictment is founded shall be declared unconstitutional by the Supreme Court of the United States.

Dated at Canton, New York, August 16, 1920.

SAM GETTINGER.

STATE OF NEW YORK,
County of St. Lawrence, ss:

On this 16th day of August, 1920, before me, the subscriber, personally appeared Samuel Gettinger, to me personally known and

known to be the same person described in and who executed the foregoing plea and waiver, and duly acknowledged the execution thereof.

C. W. HIGGISON,
Clerk, U. S. District Ct.

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Exhibit to bill of complaint

Schedule B

U. S.

vs.

HARRY POMERANTZ, IMPLD., ETC.

In consideration of the acceptance of a plea of nolo contendere to the indictment for profiteering in the United States District Court of the Northern District of New York, I, Harry Pomerantz, one of the defendants above named, do hereby waive all rights which I may have to the moneys paid by me in payment of fines to be imposed upon me on acceptance of such plea and release the United States of America and all officers thereof from all claim to such money, except only in case the whole Lever Act be declared unconstitutional and void.

Dated Oct. 27, 1920.

HARRY POMERANTZ. [L. S.]

STATE OF NEW YORK,

County of , ss:

On this 28th day of October, 1920, before me, the undersigned, personally appeared Harry Pomerantz, to me known and known to me to be the same person named in the foregoing waiver and he did acknowledge to me that he executed the same.

C. W. HIGGISON,
Clerk, U. S. District Court.

[File endorsement omitted.]

9 [Return on service of writ, omitted in printing.]

10-11 [Summons and sheriffs' return in usual form, filed May 31, 1924, omitted in printing.]

12

In United States District Court

[Title omitted.]

Demurrer

Filed May 29, 1924

Defendant demurs to the bill and petition in this case for the reason that it fails to set forth a cause of action within the jurisdiction of this court.

HENRY R. FOLLETT,
Sp. Asst. United States District Attorney,
Attorney for Defendant.

[File endorsement omitted.]

13

In United States District Court

[Title omitted.]

Notice of motion for judgment

Filed June 25, 1924

Please take notice that a motion will be made at a special term of this court, held at the Post Office Building, in the city of Albany, on the 2d day of July, 1924, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order overruling the demurrer of the defendant, and for judgment on the pleadings and for such other and further relief as may be proper in the premises.

Dated the 24th day of June, 1924.

Yours, etc.,

DUGAN & BOOKSTEIN, AND
JOSEPH GREENBERG,*Attorneys for Plaintiffs.*

To HENRY R. FOLLETT,

*Special Assistant, U. S. Attorney,**Attorney for Defendant.*

[File endorsement omitted.]

14

In United States District Court

[Title omitted.]

Order for judgment

Filed March 9, 1925

The above-entitled action having been commenced by due service of a summons and complaint on the 21st day of May, 1924, to recover the sum of \$5,000 as a fine pursuant to the provisions of section 4 of the statute of the United States of America, being chapter #53 of the 65th Congress of the United States, passed on August 10th, 1917, known as the Lever Act as amended by section #2 of chapter 80 of the 65th Congress, passed on October 22, 1919, which section was declared unconstitutional by the United States Supreme Court, February 28th, 1921, and the United States attorney for the Northern District of New York having appeared and filed a demurrer to said complaint, and a motion having been made by the attorneys for the plaintiffs for judgment on the pleadings on the 24th day of June, 1924, and after due consideration the demurrer of the defendant having been overruled, and the defendant not desiring to plead over, a motion for judgment on the pleadings having been made by Joseph Greenberg, attorney for the plaintiffs, it is:

Ordered, adjudged, and decreed that the plaintiffs, Samuel Gettinger and Harry Pomerantz, have judgment against the United States of America in the sum of \$5,000, which sum was turned into the Treasury by the clerk of the United States court for

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the Northern District of New York, and the same shall be certified to the Treasury of the United States by the clerk of this Court.

FRANK COOPER,
U. S. District Judge.

Albany, New York, March 9th, 1925.

[File endorsement omitted.]

16 In United States District Court

[Title omitted.]

Judgment

Filed March 9, 1925

The issues in this action having been decided on the pleadings, by the Honorable Frank Cooper, and an order rendering a verdict in favor of the plaintiffs against the defendant in the sum of \$5,000 having been entered the 9th day of March, 1925, now, on motion of Joseph Greenberg, attorney for plaintiffs, it is hereby

Adjudged that the plaintiffs, Samuel Gettinger and Harry Pomerantz, duly recover *recover* from the defendant, the United States of America, the sum of \$5,000.

C. W. HIGGISON,
Clerk.

[File endorsement omitted.]

17 In United States District Court

[Title omitted.]

Petition for writ of error

Filed April 13, 1925

And now comes the United States of America, a corporation sovereign, defendant in said original action, and plaintiff in error herein, by Oliver D. Burden, United States district attorney for the said northern district of New York, its attorney, and says and alleges:

That on or about the ninth day of March A. D. 1925, the said District Court of the United States of America within and for the Northern District of New York, entered a judgment herein in favor of said defendants in error, in said action wherein they were plaintiffs, and the plaintiff in error herein, the said United States of America, was defendant, and against this said plaintiff in error, then defendant, in which judgment and proceedings had prior thereto in this cause and action, certain errors were committed to the prejudice of said defendant in said action, said plaintiff in error, all

of which in more detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff in error, formerly defendant in said cause and action above entitled, prays that a writ of error may issue out of this said court to the Supreme Court of the United States of America for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this said cause and action, duly authenticated, may be sent to the said Supreme Court of the United States of America. By direction of the Attorney General.

OLIVER D. BURDEN,

United States District Attorney for the Northern District of New York, Attorney for said Defendant, Now Plaintiff in Error, Office and Post Office Address: Federal Bldg., Syracuse, New York.

[File endorsement omitted.]

19

In United States District Court

[Title omitted.]

Order allowing writ of error

Filed April 13, 1925

This 9th day of April, A. D. 1925, comes the above-named defendant, United States of America, by its and their attorney, Oliver D. Burden, United States district attorney for the Northern District of New York, and files herein and presents to this court its petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof, the court does allow the writ of error, and the above-named defendant, United States of America, being a corporation sovereign, no bond shall be required of said defendant, and this writ alone shall operate as a supersedeas bond.

Done in open court, at the city of Albany, in the State of New York, and within the limits of the Northern District of the State of New York, this 9th day of April, A. D. 1925.

FRANK COOPER,

*Judge of the United States District Court
for the Northern District of New York.*

[File endorsement omitted.]

In United States District Court

Writ of error

Filed April 13, 1925

The President of the United States of America to the Judge of the District Court of the United States for the Northern District of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, and demurrer, which is the said District Court before you, between Samuel Gettinger and Harry Pomerantz, trading under the firm name and style of the Paris Cloak and Suit Company, plaintiffs, and the United States of America, defendant, a manifest error has happened to the great damage of the said United States of America, as by its complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, in the District of Columbia, on the eighth day of May next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States and of the Supreme Court thereof, the 13 day of April, in the year of our Lord, one thousand nine hundred and twenty-five, and of the independence of the United States of America the one hundred and forty-ninth.

[SEAL.]

C. W. HIGGISON,

*Clerk of the District Court of the United States
for the Northern District of New York.*

Allowed by:

FRANK COOPER,

United States District Judge.

21 Due service of the foregoing writ of error is hereby admitted and acknowledged at Albany, New York, this ———, day of ———, A. D. 1925.

*Attorney for Samuel Gettinger and Harry Pomerantz,
Trading Under the Firm Name and Style of The Paris
Cloak & Suit Company, the Above-Named Plaintiffs in
the District Court of the United States, and Defendants
in Error in the Supreme Court of the United States.*

[File endorsement omitted.]

In United States District Court

[Title omitted.]

Assignments of errors

Filed April 13, 1925

The United States of America, defendant in the above-entitled action, in connection with and as part of its petition for a writ of error filed herein, makes the following assignment of errors, which it avers and alleges were committed by the said District Court of the United States of America, within and for the Northern District of New York, in the rendition of the judgment against this plaintiff appearing from the record herein, that is to say:

First. The said District Court erred in overruling and denying the demurrer of the said defendant to the complaint, declaration, and petition of the said plaintiffs in this action;

Second. The said District Court erred in holding and deciding that the complaint, petition, and declaration of said plaintiffs stated and alleged facts sufficient to constitute a cause of action against the said defendant.

Third. The said District Court erred in not holding and deciding that said complaint, petition, and declaration of the said plaintiffs failed to set forth a cause of action within the jurisdiction of this said District Court.

Fourth. The said District Court had no jurisdiction of the subject matter of said action.

Fifth. The said District Court had no jurisdiction of the person or body politic and corporation of the said United States of America.

Sixth. The said District Court erred in entering judgment against this said defendant, the United States of America, whereas judgment ought to have been rendered and entered in favor of this said
23 defendant and against the said plaintiffs, by the dismissal of said cause and action.

Seventh. The said cause and action should have been dismissed by the order of said District Court.

Eighth. There are other fundamental and manifest errors in the said record of this case disclosed.

Exceptions were duly made in apt time to all of the said errors committed by said District Court.

By direction of the Attorney General.

UNITED STATES OF AMERICA.

By OLIVER D. BURDEN,

*United States District Attorney for the Northern District
of New York, Its Attorney, Whose Office and Post
Office Address is Federal Building, Syracuse, New York.*

[File endorsement omitted.]

[Motion in usual form showing service on Joseph Greenburg, filed April 18, 1925. Omitted in printing.]

[Title omitted.]

Stipulation to abide by decision in Chenango Valley Grocery case

Filed April 18, 1925

It is hereby stipulated and agreed by and between the parties to the above-entitled action, represented by their respective attorneys that—in case proceedings in error shall be instituted by the said defendant in the Supreme Court of the United States of America to reverse and set aside the judgment of the said District Court of the Northern District of New York, made and entered in the above-entitled cause and action on or about the ninth day of March, A. D. 1925, in favor of the above-named plaintiffs and against the above-named defendant, on the ground that said district court had no jurisdiction of said cause and action—the rights of the aforesaid parties to this action and cause, shall and will be finally determined in what is known as the Chenango Valley Grocery case, which is now pending upon appeal or proceedings in error in the said Supreme Court of the United States, and the parties hereto shall abide by the decision of said Supreme Court in said other action, which will determine whether or not the district courts of the United States of America have jurisdiction of such causes and action as the said instant and above-entitled cause and action.

Dated April 13, 1925.

JOSEPH GREENBERG,
Attorney for Said Plaintiffs,
82 State Street, Albany, New York.

OLIVER D. BURDEN,
U. S. District Attorney, Federal Building,
Syracuse, New York, Attorney for Said Defendant.

[File endorsement omitted.]

[Title omitted.]

Judge's certificate that question of jurisdiction is at issue

Filed April 13, 1925

In this cause and action, I hereby certify that the judgment herein made and entered was duly excepted to by said defendant United States of America within apt time; that by its demurrer filed herein, the question of the jurisdiction of this court alone was and is in issue and alone was considered and determined by the court upon the petition, complaint, or declaration of the above-named defendant, there being no question as to the amount involved in the said

cause and action; and that, treating the said demurrer of the defendant as presenting the sole question of the jurisdiction of this court, this court held that it had jurisdiction of the subject matter of this cause; and that treating said demurrer as presenting the sole question of jurisdiction in this case arising under the provisions of the acts of Congress commonly known as the Tucker Act, and being subdivision 20 of section 24 of the Judicial Code of the United States, and particularly whether or not this action was upon a contract, express or implied with the United States not sounding in tort, said judgment was rendered and entered for said plaintiffs and against said defendant.

This certificate is made conformably to the provisions of section 238 of the Judicial Code of the United States; and I certify further that no opinion was filed herein to be made part of the record and to be certified and sent up as part of the proceedings together with this certificate.

Dated this 9th day of April, A. D. 1925, at the city of Albany in the State of New York, and within the limits of said Northern District of the State of New York.

FRANK COOPER,

*District Judge Holding the District Court of the
United States for the Northern District of New York.*

[File endorsement omitted.]

28

In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed April 13, 1925

*To the clerk of the United States District Court within and for the
Northern District of New York:*

SIR: You will please incorporate the following record into the transcript of the record in the above-entitled cause and action, to be taken and which is taken by writ of error and proceedings in error to the honorable, the Supreme Court of the United States of America, from the judgment of the District Court of the United States within and for the Northern District of New York, made and entered in the above-entitled cause and action, last aforesaid, on or about the ninth day of March, A. D. 1925, in favor of said plaintiffs in said action last above named and mentioned and against the said United States of America and defendant, to wit:

1. The petition or complaint of said plaintiffs in said action in your said court;
2. The demurrer of the United States of America, said defendant, to said petition or complaint;

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3. The said judgment of the said District Court of the United States within and for the Northern District of New York in said action and cause;

4. A statement that the exception to said judgment was made and taken in open court by said defendant.

As acknowledgment and proof of the service of this application and praecipe upon said defendants in error is herewith submitted.

5. No opinion was filed by the court or judge in said cause and action at any time.

Very respectfully,

By direction of the Attorney General:

OLIVER D. BURDEN,

United States District Attorney Within and for the Northern District of New York, Office and Post Office Address, Federal Building, Syracuse, New York.

Service of the above and foregoing praecipe and application is hereby acknowledged and admitted by me, at Albany, New York, this ——— day of ———, A. D. 1925.

Attorney for said plaintiffs Below and Defendants in Error in the Supreme Court of the United States, to wit, Samuel Gettinger and Harry Pomerantz, Trading Under the Firm Name and Style of The Paris Cloak & Suit Company, Office and Post Office Address, Number 82 State Street, Albany, New York.

[File endorsement omitted.]

30

In United States District Court

[Title omitted.]

Order extending time

Filed June 2, 1925

This cause having been on the calendar and brought to trial at the February, 1925, term of the court and held at Albany, New York, before the court, and the court having overruled the demurrer and found in favor of the plaintiff, and judgment therefore having been entered, and it appearing that owing to the misplacement of the records and files in this case, additional time is necessary for the preparation of the papers in this case, it is on motion of Oliver D. Burden, United States attorney,

Ordered, that said February, 1925, term of this court, and time of filing necessary papers be, and the same is hereby, extended until thirty days after notice of the decision in the case of Greenspan against United States or similar case now pending in the Supreme

Court of the United States, or not later than Jan. 1, 1926, for the purpose of filing a bill of exceptions, or other necessary papers on appeal, and all other purposes of said action, and this order be entered nunc pro tunc as of May 7, 1925.

Dated this 27th day of May, 1925.

FRANK COOPER,
U. S. District Judge

[File endorsement omitted.]

31

In United States District Court

[Title omitted.]

Stipulation to docket case

Filed January 30, 1926

It is hereby agreed by and between the respective parties to the above-entitled cause and action that the stipulation, heretofore entered into by and between said parties that this cause and action should be stayed until the decision of the Supreme Court of the United States of America in what is known as the Shenango Valley Grocery Company case against the United States of America, heretofore pending in the United States Court of Claims, presenting like questions as appear in this said cause, should be rendered, inasmuch as said Shenango Valley Grocery Company has abandoned its appeal or error proceeding from a decision adverse to it in said Court

of Claims, is hereby withdrawn, abrogated, and annulled; and in lieu thereof, the said cause above entitled shall be docketed in the said Supreme Court of the United States of America for decision therein upon the record in said cause, including the petition and complaint of the above-named plaintiffs, the demurrer thereto by the United States of America, and the judgment and orders of said District Court of the United States of America for the Northern District of New York, entered in said District Court against said defendant and in favor of said plaintiffs, for the sum or amount sued for in said action.

Dated this 28th day of June, A. D. 1926.

JOSEPH GREENBERG,
Attorney for Said Original Plaintiffs,
Office and Post Office Address 82 State Street, Albany, N. Y.

OLIVER D. BURDEN,
United States District Attorney for the Northern District
of New York, Attorney for Said Original Defendant,
United States of America. Office and Post Office Ad-
dress, Federal Building, Syracuse, New York.

[File endorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

In the Supreme Court of the United States

Statement of points to be relied upon and designation to print the entire record

Filed August 2, 1926

The plaintiff in error states that it intends to rely on its writ of error on the following points:

1. That the District Court of the United States for the Northern District of New York was without jurisdiction to enter the judgment sought to be reviewed, as the cause of action set forth therein if based on an implied contract, was based upon a contract implied in law and not upon a contract implied in fact.

2. That the cause of action is essentially one sounding in tort, which the District Court of the United States was without jurisdiction to entertain.

3. That in the absence of legislation conferring jurisdiction on the District Court it was without jurisdiction to entertain this cause of action.

The plaintiff in error further states that the entire record as filed in this court is necessary for the consideration of the points stated.

Respectfully submitted,

WILLIAM D. MITCHELL,
Solicitor General.

[File endorsement omitted.]

(Indorsed on cover:) File No. 32104. N. New York. D. C. U. S. Term No. 537. The United States of America, plaintiff in error, vs. Samuel Gettinger and Harry Pomerantz, trading under the firm name, etc. Filed July 29th, 1926. File No. 32104.

○